

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF IOWA, and TAYLOR BLAIR,</p> <p>Plaintiffs,</p> <p>V.</p> <p>IOWA SECRETARY OF STATE PAUL PATE, in his official capacity,</p> <p>Defendant.</p>	<p>CASE NO. CVCV056403</p> <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER</p>
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The above captioned matter came on for trial on June 24-27, 2019. The Plaintiffs, League of United Latin American Citizens of Iowa (“LULAC”) and Taylor Blair were represented by attorneys Gary Dickey, Bruce Spiva, Brian Marshall and K’Shaani Smith. The Defendant, Iowa Secretary of State Paul Pate, was represented by Solicitor General Jeffrey Thompson, and Assistant Attorneys General Matthew Gannon and Thomas Ogden. Upon conclusion of the trial on June 27, 2019, the court granted the parties’ request to leave the record open until and including July 29, 2019, for receipt of further stipulations regarding facts and/or exhibits. On July 29, 2019, the parties submitted to the court a Joint Stipulation of Fact (Voter Registration Process) and Joint Stipulation of Fact (Voter Witnesses’ Voter Profile Reports), at which time the record was closed, and the matter submitted to the court for ruling.

The court, having heard the testimony of witnesses, reviewed the admitted exhibits¹ and stipulations of the parties, and being otherwise informed, makes the following Findings of Fact,

¹ The court admitted Plaintiffs’ exhibits 20 through 47, 49, 54-55, 208A and 208C, subject to Defendant’s objections. The court having considered the objections, now overrules them in their entirety, and admits the exhibits.

Conclusions of Law, and Ruling.

I. PROCEDURAL HISTORY

In 2017, House File 516 (“HF 516”) was passed by the Iowa legislature and signed into law by Governor Terry Branstad. HF 516 made changes to Iowa’s election procedures. On May 30, 2018, the Plaintiffs filed their petition herein challenging several provisions of HF 516, and seeking temporary and permanent injunctions enjoining those provisions from taking effect, along with certain regulations regarding the law’s implementation. At issue here are three of HF 516’s provisions: the first, requiring voters to show certain forms of identification when voting at the polls; the second, requiring voters to provide a voter identification number when requesting an absentee ballot; and the third, authorizing county auditors to challenge or reject absentee applications and ballots based upon a determination that the voter’s signature on the absentee application or ballot doesn’t match a signature on record elsewhere. The Plaintiffs also originally challenged a provision of HF 516 that shortens the voting period for absentee ballots from forty days preceding a general or primary election to twenty-nine days. That challenge has since been dropped.

The Plaintiffs’ original petition herein also challenged an administrative rule adopted by the Secretary of State limiting the sources from which a county auditor can obtain missing information from voters’ requests for absentee ballots. That claim was severed, given a separate case number (CVCV056608), and tried as a petition for judicial review. The court’s ruling on that petition striking the administrative rule is now on appeal.

On June 27, 2018, a hearing was held on the Plaintiffs’ Motion for Temporary Injunction. On July 24, 2019, the court entered its ruling granting a temporary injunction. As relates to the issues still pending before the court, the temporary injunction enjoined: 1) the use of the signature matching

provisions as set forth in Iowa Code sections 53.2(5) and 53.18(3), second; 2) the requirement that absentee ballot applications contain a voter verification number as set forth in Iowa Code section 53.2(4)(a)(4); and 3) the Secretary of State from including on the absentee ballot application language stating, “[a]n absentee ballot cannot be issued until ID number is provided” or similar words indicating that such information is “required.” At that hearing, the Plaintiffs did not seek to temporarily enjoin the provisions of HF 516 requiring voters to show certain forms of identification when voting at the polls, as voters unable to provide such identification were still allowed to vote with the use of an oath of identification until elections held after January 1, 2019.

The Defendant sought interlocutory review of the temporary injunction order which was granted by the Iowa Supreme Court. On August 15, 2018, the Iowa Supreme Court entered its Order affirming the above provisions of the temporary injunction order. The injunction remains in effect pending the court’s ruling herein.

II. FINDINGS OF FACT

A. The Plaintiffs.

The League of United Latin American Citizens of Iowa (“LULAC”) is a chapter of the League of United Latin American Citizens, the oldest and largest nonpartisan Latino civil rights organization in the United States. Among other things, LULAC encourages civic engagement, including voter registration, and voter mobilization of Latino residents throughout Iowa. Most members of LULAC are residents of Iowa and vote in Iowa.

In furtherance of its mission, LULAC expends significant resources conducting voter registration drives and voter mobilization events to encourage LULAC members and other

eligible Iowa voters to register, vote early, and cast absentee ballots during election years.

LULAC also holds events in which members distribute voter registration materials and absentee ballot request forms, encourage people to vote, and discuss the issues affecting the Latino community. Since the enactment of HF 516, LULAC has provided education to voters on the requirements of HF 516, including the voter ID requirement, the absentee ID number requirement, and the signature verification provisions.

LULAC focuses its resources on getting out the vote among the Latino community in Iowa, many of whom have low incomes, have less formal education, and do not speak English as a first language or at all. LULAC also advocates on legislative issues on the local, state, and national level by monitoring legislation, attending legislative events, and noting whether LULAC is for or against a particular bill. LULAC opposed HF 516 in the legislative process because it believes the law makes it more difficult for Iowans, particularly Latino Iowans, to vote and discourages voters from getting involved in the political process. It intends to continue to conduct voter engagement and education for future elections.

The Plaintiff, Taylor M. Blair, is a student at Iowa State University, a resident of Ames, Iowa, and has been a registered voter in the state of Iowa since August 25, 2016. He is politically active. He is a member and former Vice President of the College and Young Democrats of Iowa; a member and former President of the College Democrats at Iowa State; a former precinct chair; has been involved in multiple campaigns in Iowa; and currently serves as campaign manager for an Ames city council race.

Mr. Blair has worked and continues to work to register students to vote on the Iowa State campus, talking to and registering students and assisting voters with absentee ballot request

forms. He has otherwise conducted voter outreach and education, including training volunteers in get-out-the-vote efforts. Since the enactment of HF 516, Mr. Blair's voter outreach and education efforts have included educating voters on the new voting requirements imposed by HF 516. He plans on being actively engaged in voter registration efforts in future elections, including educating voters on the voter ID and absentee ID number requirements of HF 516. He also intends to vote in future elections in Iowa.

B. The Defendant.

The Defendant, Secretary of State Paul Pate, is the chief election official for the State of Iowa, the state commissioner of elections, and the state registrar of voters of Iowa, and is responsible for the administration of elections in Iowa. *See Iowa Code §§ 47.1(1)–(3), 47.7(1).* His responsibilities include, but are not limited to, setting forth “uniform election practices and procedures” and supervising local election officials regarding the proper methods of conducting elections. *Iowa Code § 47.1(1)–(3)*, as well as enforcing and implementing election-related legislation. *See id.*

Secretary Pate is also responsible for training county auditors; preparing guides for county auditors and Precinct Election Officials (“PEOs” or “pollworkers”); and answering questions from auditors, PEOs, and constituents regarding election administration. He is also responsible for maintaining the statewide voter registration database, commonly referred to as “I-Voters;” matching voter records in I-Voters to the Iowa Department of Transportation (“DOT”) records; initially identifying the active, registered voters who did not possess current and valid driver’s licenses or nonoperators’ identification cards issued by the DOT; and designing and mailing voter identification cards to such voters.

C. The Challenged Provisions of HF 516.

HF 516 established a voter ID requirement for in-person voting on election day. *Iowa Code* §§ 49.78 and 48A.10A. It also made changes to absentee voting, including requiring a voter to provide an identification number on an absentee ballot application and imposing signature-matching requirements for absentee applications and ballots. *Iowa Code* §§ 53.2, 53.18(3).

i. Voter ID requirement.

For elections in 2018, HF 516 required pollworkers to ask for ID but permitted a voter who did not present accepted ID at the polls to sign a written oath stating that he or she was registered and eligible to vote (an “Oath of Identity” or “Oath”). *Iowa Code* § 49.78(8). The voter could then cast a regular ballot that was counted without any further action by the voter. *Id.* This process was known as a “soft rollout” of the voter ID requirement and did not prevent a voter without accepted ID from casting a regular ballot in 2018.

For elections starting in 2019, HF 516 requires voters to present specified types of identification to vote in person. *Iowa Code* § 49.78(1). There are six types of ID that may be accepted as proof of identity at the poll: (1) an Iowa driver’s license; (2) an Iowa nonoperator’s identification card; (3) a U.S. passport; (4) a military identification card; (5) a veteran’s identification card; or (6) a tribal identification card that includes a photo, signature, and an expiration date. *Iowa Code* § 49.78(2).

A registered voter who is unable to present one of the above forms of identification has three other choices. First, he or she could present a current voter identification card issued by Secretary of State (“Voter ID Card”). *Iowa Code* § 49.78(3)(a). A Voter ID Card containing a signature line and a 4-digit PIN is to be issued to “each active, registered voter whose name does

not appear in the department of transportation's files" (as having an Iowa driver's license or an Iowa nonoperator's ID card). *Iowa Code* § 48A.10A(1). The Voter ID Card is different than any voter registration card otherwise issued to voters.

Second, he or she could present one of the other forms of identification sufficient to establish identity and residence when registering to vote at the polls on election day under section 48A.7A(1)(b). *Iowa Code* § 49.78(3)(b). That section provides:

(1)For purposes of this section, a person may establish identity and residence by presenting to the appropriate precinct election official a current and valid Iowa driver's license or Iowa nonoperator's identification card or by presenting any of the following current and valid forms of identification if such identification contains the person's photograph and a valid expiration date:

- (a) An out-of-state driver's license or nonoperator's identification card.
- (b) A United States passport.
- (c) A United States military or veterans identification card.
- (d) An identification card issued by an employer.
- (e) A student identification card issued by an Iowa high school or an Iowa postsecondary educational institution.
- (f) A tribal identification card or other tribal enrollment document issued by a federally recognized Indian tribe or nation, if the tribal identification card or other tribal enrollment document is signed before the card or document is presented to the election official.

(2) If the photographic identification presented does not contain the person's current address in the precinct, the person shall also present one of the following documents that shows the person's name and current address in the precinct, and the document must be dated, or describe terms of residency current to, within forty-five days prior to presentation:

- (a) Residential lease.
- (b) Property tax statement.
- (c) Utility bill.
- (d) Bank statement.
- (e) Paycheck.
- (f) Government check.
- (g) Other government document.

Iowa Code § 48A.7A(1)(b).

The third choice is that a person who is registered to vote but is unable to present an accepted form of identification to vote may establish identity and residency in the precinct by written oath of a person who is also registered to vote in the precinct. *Iowa Code* § 49.78(4).

If acceptable identification is provided at the poll, HF 516 further provides that pollworkers must examine the voter's ID, "including the signature, to determine whether the person offering to vote appears to be the person depicted on the identification card." *Iowa Code* § 49.78(2).

Any voter who does not meet the identification requirement at the poll may cast a provisional ballot that will be counted if the voter returns to the polling location on election day by the time the polls close, or goes to the county auditor's office by the time of the election canvass (for general elections, by noon on the Monday after election day) with an accepted form of ID in-person. *Iowa Code* §§ 49.78(7), 49.81; *Iowa Admin. Code* r. 721—21.3(7).

ii. Voter ID number requirement on absentee ballot application.

HF 516 provides that an absentee ballot application shall include "[t]he registered voter's voter verification number," which is a driver's license number or nonoperator's identification card number, or the identification number assigned to the voter by the Secretary of State. *Iowa Code* §§ 53.2(4)(a)(4), (4)(c). If the voter does not include a voter verification number on the absentee ballot application, the statute requires that "the [county auditor] shall, by the best means available, obtain the additional necessary information." *Iowa Code* § 53.2(4)(b). If the county auditor obtains the additional necessary information, the absentee ballot is to be issued despite

the voter not including the voter verification number when submitting the application. *Iowa Admin. Code* 721—21.306(53)(1).2

iii. Signature verification (matching) on absentee ballots and applications for ballots.

HF 516 imposed new signature verification requirements at two steps in the absentee voting process, effective January 1, 2018. First, the county auditor may dispute an application for an absentee ballot if it appears to the county auditor that the signature on the application has been signed by someone other than the registered voter, in comparing the signature on the application to the signature on record of the registered voter named on the application. If the county auditor disputes a registered voter's application, he or she shall notify the registered voter who may submit a new application and signature or update the registered voter's signature on record. *Iowa Code* § 53.2(5). There is no provision extending the time to submit an absentee ballot application in the event of a disputed application.

Second, if the affidavit or return envelope accompanying a completed absentee ballot “appears to the [auditor to have] been signed by someone other than the registered voter” based on a comparison between “the signature on the envelope” and “the signature on record of the registered voter,” it shall be considered to contain a defect, requiring the auditor to immediately notify the voter of that fact and that the voter's absentee ballot shall not be counted unless the voter requests and returns a replacement ballot in the time permitted under section 53.17(2) (before the polls close at 9 p.m. on election day or postmarked by the Monday before election day, and received by Monday at noon after election day). *Iowa Code* § 53.18(3). However, voters

2 Despite the requirement that county auditors use the “best means available,” the Secretary adopted a rule providing that auditors “may not use the voter registration system to obtain the information,” *Iowa Admin. Code* 721—21.306(53). The court in a separate, judicial review ruling entered on January 23, 2019 in Polk County case CVCV056608, permanently enjoined implementation of that rule, finding it to be “unreasonable, arbitrary,

whose absentee ballots are received after 5 p.m. on the Saturday before a general election but before the absentee ballot receipt deadline, receive no notice if the ballot is rejected because of an alleged signature defect. *Iowa Code* § 53.18(2).

D. The Implementation of HF 516.

To comply with the mandate of HF 516 to issue a Voter ID Card to “each active, registered voter whose name does not appear in the department of transportation’s files”, the Secretary of State, in December 2017, mailed about 123,000 Voter ID cards to active, registered voters who, according to the Secretary of State’s database, did not have an unexpired driver’s license or nonoperator’s ID card issued by the DOT. Since that time, county auditors have mailed around 28,000 more Voter ID Cards to voters who registered or changed their registration and according to the Secretary of State’s database, did not have an unexpired driver’s license or nonoperator’s ID card issued by the DOT. The Secretary of State’s mailing was not perfect. There were errors in matching the statewide voter registration database with DOT records. Also, at least 19,000 voters did not receive a Voter ID Card in the initial mailing in December, 2017, because the mailings were returned as undeliverable by the post office and never resent.

Other registered voters who remain on the DOT’s driver’s license or nonoperator’s identification card files, but no longer possess their DOT-issued IDs because they have been suspended, revoked, lost, or discarded are not eligible to receive a Voter ID Card. *See, Iowa Code* § 48A.10A(2).

Registered voters who are eligible to receive a Voter ID Card, but who, for whatever reason, did not receive it automatically either from the Secretary of State through the December,

capricious, and an abuse of discretion.” That ruling is currently on appeal (S. Ct. No. 19-0303), and the issues presented there are not addressed here.

2017 mailing or from the county auditor after registering or changing a registration, can and have requested one from the county auditor. All Voter ID Cards are issued free of charge. *Iowa Code* § 48A.10A(3).

In the 2018 general election, during the soft rollout of HF 516, 784,533 voters cast in-person votes statewide. Of those, 10,998 (1.4%) did not present an accepted form of ID and chose to vote using an Oath of Identity. In that same election, 32,335 people voted in-person who had been mailed a Voter ID Card either by the Secretary of State in December, 2017, or later by a county auditor. 29,099 (90%) of those voted without signing an Oath of Identity. 3,236 (10%) voted using an Oath of Identity.

HF 516 required that the Secretary of State take steps to educate voters regarding the new voter ID requirement. Funds (\$150,000 to \$200,000) were allocated for this purpose. Educational efforts included incorporation of educational information into its ongoing voter engagement efforts; media advertising; a social media campaign; promotion at the Iowa State Fair; development of educational materials for civic and voter advocacy groups to use; outreach and presentations to advocacy and focus groups; and working with county auditors to reinforce outreach at the county level. Education was also provided to county auditors and staff regarding implementation of HF 516.

E. Burdens on Voters.

The court was provided with anecdotal and hypothetical examples of burdens that either have been or could be placed on voters as the result of HF 516. These include:

- Obtaining, maintaining, and presenting some form of ID in order to cast a ballot is a burden.
- Some voters who should have been sent Voter ID Cards by the Secretary of State

never received them due to errors in matching the statewide voter registration database with DOT records, and mailings being returned as undeliverable by the post office and never resent.

- The Voter ID Cards lack durability and are more prone to loss or damage because they are made on card stock paper.
- The Voter ID Cards have only one use unlike most other forms of ID and thereby are less likely to be carried on a daily basis, particularly by infrequent voters, and more prone to loss (witness testified that she lost her Voter ID Card on election day).
- The Secretary of State sent and subsequently county auditors send unsolicited Voter ID Cards to voters without DOT-issued IDs without request. Many voters did not and do not expect to receive them and are less likely recognize their significance and retain them, unlike a driver's license or another form of ID that is purposely sought out. One voter testified that she did not recall receiving a Voter ID Card in December 2017, "but it's possible that I just didn't know that I needed to keep it and might have disposed of it". Another testified that she did not recall receiving a Voter ID Card in December 2017 because "some mail just got lost."
- The Secretary of State's December 2017 mailings occurred far in advance of the elections in which many of these voters are likely to have use for the Voter ID Cards, such as the November 2020 presidential election, which will occur nearly three years after the initial mailing making those cards less relevant in the voter's mind.
- Taking steps to obtain or maintain a current and valid form of ID is impractical for some voters. One voter testified that she had no need to renew her Iowa driver's license because she did not drive due to suffering from seizures caused by a medical condition and otherwise has no need for a driver's license. Another testified to the lengthy process she endured to acquire a new driver's license to vote in the November, 2018 general election, ultimately being unable obtain one and signing an Oath of Identity instead.
- If a voter loses, voluntarily surrenders, or destroys an Iowa driver's license, that voter cannot be issued a Voter ID Card even if he or she requests one and thus must pay the costs associated with obtaining another accepted form of ID just for the purpose of voting. The same would hold true for a voter whose license is suspended or revoked, as that person is not removed from the DOT files, and therefore the statewide voter registration database will not permit a Voter ID Card to be issued.
- If voters lose or forget their DOT-issued IDs or other IDs on election day, they will be prevented from casting a regular ballot.

- Voters who intend to vote with their Voter ID Card but cannot locate it on election day must wait three to seven days to obtain another card if requested by mail because they are unable to travel to the county auditor's office during the workweek during normal business hours.
- Curing a provisional ballot is burdensome because voters must take additional actions, thereby expending time and resources, to have their ballots counted.
- Voters who lost their accepted form of ID, or who otherwise do not possess any acceptable ID on election day, may have difficulty obtaining ID within the limited timeframe provided to cure their provisional ballots. One voter testified that her passport was expired, she lost her Voter ID Card, and she only had an out-of-state driver's license but no proof of address.
- Even for voters who are able to obtain ID before the deadline to cure, it is burdensome to travel, in many cases out of town, to the county auditors' offices during the workweek and within normal business hours.
- the limited list of accepted forms of ID other than the Voter ID Card makes navigating the voter ID requirement burdensome for Iowa voters, and the law excludes some types of ID that are just as or more reliable proof of identity as other forms of ID that it includes.
- voters were given misinformation or incomplete information from the pollworkers on election day.
- some voters were unaware that Iowa had a voter ID law or confused by the voter ID requirement.

III. CONCLUSIONS OF LAW

A. Standing.

The Defendant has not challenged either Plaintiff's standing to bring this action.

Nevertheless, standing is a jurisdictional requirement, and can be raised at any time, including by the court *sua sponte*. *Pucket v. Hot Springs School District #23-2*, 526 F.3d 1151, 1158 (8th Cir. 2008). The Plaintiffs briefed the issue of standing, and the court will briefly address it.

To have standing to challenge a government action in Iowa, “[a] plaintiff ‘must (1) have a specific personal or legal interest in the litigation, and (2) be injuriously affected.’” *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 606 (Iowa 2012) (quoting *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008)). The Plaintiff, Mr. Blair, has individual standing to challenge HF 516 because, as an Iowa voter, he alleges that the law burdens his right to vote by requiring him to maintain and present a current and valid ID to vote in person on election day. *See, e.g., Common Cause/Ga.*, 554 F.3d at 1351–52 (“Requiring a registered voter either to produce photo identification to vote in person or to cast an absentee or provisional ballot is an injury sufficient for standing.”); *One Wis. Inst. v. Nichol*, 186 F. Supp. 3d 958, 966 (W.D. Wis. 2016) (“[T]he requirement of presenting an ID to vote is a sufficient injury for purposes of Article III standing.”). Mr. Blair is an active registered Iowa voter; does not possess a Iowa driver’s license or nonoperator’s identification card; and intends to vote in the future. He is directly and imminently impacted by the challenged provisions of HF 516, and therefore has standing to sue.

The Plaintiff, LULAC, is made up of members who vote in Iowa, and has an organizational purpose to ensure Iowans, particularly Latino Iowans, have access to and exercise the right to vote. An organization may rest its right to sue on the rights of its members. *Citizens for Washington Square v. City of Davenport*, 277 N.W.2d 882, 886 (Iowa 1979) (citing *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977); *NAACP v. Button*, 371 U.S. 415, 428, 83 S.Ct. 328, 335, 9 L.Ed.2d 405, 415 (1963)). To assert the rights of its members and constituents as their representative, an organization must show that any of its members or constituents would otherwise have standing to sue as an

individual, the individual participation of each injured party is unnecessary, and the interests it seeks to protect are germane to the organization's purpose. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. at 342–45. As an organization made up of Iowa voters with a mission closely tied to voter engagement, participation, and turnout, LULAC has standing.

B. The Voter ID Requirement.

The Plaintiffs assert that the requirement that voters produce identification when voting at the polls violates substantive due process regarding the right to vote as well as equal protection rights. Article II, section 1 of the Iowa Constitution provides in relevant part, that every eligible resident “shall be entitled to vote at all elections which are now or hereafter may be authorized by law.” *Iowa Const. art. II, § 1.* Voting is a fundamental right in Iowa. *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 848 (Iowa 2014). Under the Iowa Constitution, a burden or abridgement of a fundamental right, such as the right to vote, is subject to strict scrutiny. *See State v. Hernandez-Lopez*, 639 N.W.2d 226, 238 (Iowa 2002) (“If the asserted right is fundamental, we apply strict scrutiny analysis.”); *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978)) (“[R]egulatory measures abridging the right to vote ‘must be carefully and meticulously scrutinized.’”).

The first step in any analysis when strict scrutiny is invoked is to determine whether the fundamental right at issue has been infringed by the challenged law. *McQuistion v. City of Clinton*, 872 N.W.2d 817, 832-33 (Iowa 2015). The alleged infringement is unconstitutional only when it “has a direct and substantial impact” on the fundamental right. *Id.* at 833 (quoting *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005)). Reasonable regulations that do not directly and substantially interfere with the right may be imposed. *Id.* If a fundamental right is not infringed,

the statute or governmental action “need only survive a rational basis analysis.” *Id* (quoting *State v. Hernandez-Lopez*, 639 N.W.2d 226, 238 (Iowa 2002)).

This threshold inquiry is also consistent with the federal framework for analyzing a challenged election law, known as *Anderson-Burdick*, which balances a state’s interest in a challenged election law against the burden the law imposes. Under *Anderson-Burdick*, “severe restrictions” on a constitutional right survive only if “narrowly drawn to advance a state interest of compelling importance.” *Ohio Democratic Party v. Husted*, 834 F.3d 620, 627 (6th Cir. 2016) (quotations omitted). Regulations that impose “more-than-minimal” but “less-than-severe” burdens require a “flexible” analysis that weighs the burden against the state’s asserted interest and chosen means. *Id.* (quotations omitted). “Minimally burdensome and nondiscriminatory regulations,” on the other hand, “are subject to a less-searching examination closer to rational basis and the State’s important regulatory interests are generally sufficient to justify the restrictions.” *Id.* (quotations omitted).

In determining whether the fundamental right of Iowans to vote has been infringed by the enactment of the voter ID requirements of HF 516, the court first notes that the legislation, at least on its face, appears to affect all voters the same way. Before HF 516 passed, no pre-registered voters had to show an ID at the poll. After HF 516 passed, all registered voters have to show an ID at the poll. When examined a little more closely, however, and with the understanding that the Iowa Supreme Court could, as it has in the context of abortion legislation, measure the ID requirement’s constitutionality by “its impact on those whose conduct it affects” (*Planned Parenthood of the Heartland v. Reynolds*, 915 N.W.2d 206, 232 (Iowa 2018) (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 894 (1992))), the ID requirement affects

three categories of registered voters differently: 1) those who possess an Iowa driver's license or nonoperator's identification card; 2) those who do not possess an Iowa driver's license or nonoperator's identification card and do not appear in the DOT's driver's license or nonoperator's identification card files; and 3) those who do not possess an Iowa driver's license or nonoperator's identification card, but nevertheless do appear in the DOT's driver's license or nonoperator's identification card files.

The Plaintiffs argue that the court should break it down further, and examine this facial challenge to the legislation based on its impact on young voters, old voters, female voters, minority voters, poor voters and voters who are Democrats. They argue that voters in these categories are less likely to have a driver's license or non-operators identification, and therefore are less likely to have an approved identification to show at the polls. The Plaintiffs point to statistics from the 2018 general election during the soft rollout of the voter ID legislation. Those statistics looked at the makeup of the 10,998 voters in that election who did not present an accepted form of ID and chose to vote using an oath of identity. This number represents just 1.4% of the voters casting votes in the 2018 general election. No similar analysis was provided as to the makeup of the 98.6% of voters who voted using an accepted form of ID. Further, the Plaintiffs make the unsubstantiated assumption that the 10,998 voters *could* not present an approved form of ID, and that they were *forced* to vote using an oath of identity. There is no way to know from the record how many of these voters were unable to present an acceptable form of ID as opposed to simply choosing not to do so for whatever reason, including protest. There was anecdotal evidence that protests of this kind were encouraged by some, including at least one voting advocate group. The evidence presented simply did not demonstrate that the burden on

young voters, old voters, female voters, minority voters, poor voters and voters who are Democrats to show an approved form of identification at the polls is appreciably greater than the rest of the population.

i. Voters who possess an Iowa driver's license or nonoperator's identification.

No evidence was presented that the voter ID requirements of HF 516 has had any effect at all on voters in possession of their Iowa driver's license or nonoperator's identification. This leaves the court to believe that voters brought these IDs to the polls and voted with little or no difference compared with before enactment of HF 516. The Plaintiffs did not identify any alleged burden for voters in this category.

ii. Voters who do not possess an Iowa driver's license or nonoperator's identification card and do not appear in the DOT's driver's license or nonoperator's identification card files.

Under new section 48A.10A, voters who do not possess an Iowa driver's license or nonoperator's identification card and do not appear in the DOT's driver's license or nonoperator's identification card files are to be issued a Voter ID Card. The Plaintiffs allege the voters in this category have been burdened by the voter ID requirement because:

- obtaining, maintaining, and presenting some form of ID in order to cast a ballot is a burden;
- the Voter ID Cards lack durability and are more prone to loss or damage because they are made on card stock paper;
- the Voter ID Cards have only one use unlike most other forms of ID and thereby are less likely to be carried on a daily basis, particularly by infrequent voters, and more prone to loss;
- the Secretary of State sent and subsequently county auditors send unsolicited Voter ID Cards to voters without DOT-issued IDs without request, and many

voters did not and do not expect to receive them and are less likely recognize their significance and retain them, unlike a driver's license or another form of ID that is purposely sought out;

- the Secretary of State's December 2017 mailings occurred far in advance of the elections in which many of these voters are likely to have use for the Voter ID Cards, such as the November 2020 presidential election, which will occur nearly three years after the initial mailing making those cards less relevant in the voter's mind;
- voters who intend to vote with their Voter ID Card but cannot locate it on election day must wait three to seven days to obtain another card if requested by mail because they are unable to travel to the county auditor's office during the workweek during normal business hours;
- curing a provisional ballot is burdensome because voters must take additional actions, thereby expending time and resources, to have their ballots counted; voters who lost their accepted form of ID, or who otherwise do not possess any acceptable ID on election day, may have difficulty obtaining ID within the limited timeframe provided to cure their provisional ballots;
- even for voters who are able to obtain ID before the deadline to cure, it is burdensome to travel, in many cases out of town, to the county auditors' offices during the workweek and within normal business hours;
- the limited list of accepted forms of ID other than the Voter ID Card makes navigating the voter ID requirement burdensome for Iowa voters, and the law excludes some types of ID that are just as or more reliable proof of identity as other forms of ID that it includes;
- voters were given misinformation or incomplete information from the pollworkers on election day; and
- some voters were unaware that Iowa had a voter ID law or confused by the voter ID requirement.

None of the above burdens set forth by the Plaintiffs rise to the level of an infringement on the right to vote. First, the evidence at trial showed that over 90% of eligible voters in Iowa have an Iowa driver's license or nonoperator's identification. Further, as shown by the evidence presented regarding the 2018 general election, 90% of voters casting in person ballots who had

been issued a Voter ID Card voted using some form of accepted identification. This means that, like voters with a driver's license or non-operator ID, the overwhelming majority of voters not in the DOT files had and brought with them an acceptable ID to the polls. This is regardless of when the voter ID cards were sent; whether the cards were sent by the Secretary of State or a county auditor; that the cards are on card stock and not plastic; that the cards are not used on a frequent basis. The evidence also showed that there was no decline in the number of in person votes cast after enactment of HF 516 than before.

The above evidence aside, the fact that some voters may lose or misplace their ID, or forget to bring it to the polls presents no greater burden than the burdens associated with registering to vote and voting generally, such as filling out a form, finding and getting to the proper polling place, voting during the hours the polls are open, etc. "Burdens of that sort arising from life's vagaries, however, are neither so serious nor so frequent as to raise any question about ... constitutionality." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (opinion of Stevens, J.).

The burdens that really matter here are the burdens associated with the right to vote of eligible voters who are not in the DOT files. *See id.* ("[t]he burdens that are relevant to the issue before us are those imposed on persons who are eligible to vote but do not possess [an acceptable form of identification]"). For these voters, HF 516 provides that they be issued a Voter ID Card, free of charge. The initial mandate was for the Secretary of State to provide Voter ID cards to active, registered voters who, according to the Secretary of State's database, did not have an unexpired driver's license or nonoperator's ID. This took place through a mailing in November, 2017. Thereafter, county auditors mail Voter ID cards to voters when they register or change their

registration and according to the Secretary of State's database, do not have an unexpired driver's license or nonoperator's ID. The November, 2017 mailing was not perfect. 19,000 of the 123,000 mailings came back undelivered, and there was some evidence that the Secretary of State and DOT records did not match perfectly, resulting in some voters who were eligible to receive a Voter ID Card not getting one in the mail from the Secretary of State. Nevertheless, any registered voter eligible to receive a Voter ID Card who either didn't receive it automatically or who has lost or discarded it can get one by simply requesting it from the county auditor. So, the burden to exercise the right to vote by registered voters not in the DOT files is no greater than opening an envelope automatically sent by the Secretary of State or county auditor, or requesting one from the county auditor; and taking that card to the polling place.

Because every registered voter not in the DOT files either gets or can easily get a free Voter ID Card, any issues surrounding other forms of ID acceptable under sections 49.78(2) and 49.78(3)(b) are inconsequential. The existence or non-existence of other forms of acceptable ID do not create any additional burden beyond the minimal burden associated with obtaining a Voter ID Card and bringing it to the polling place.

Similarly, the provisional ballot process does not create any additional burden beyond the minimal burden associated with obtaining a Voter ID Card and bringing it to the polling place. In other words, the issue of casting and curing a provisional ballot doesn't even come up if a voter complies with the simple requirement of bringing an ID to the poll. Even so, casting a provisional ballot that has to be cured at the county auditor's office prior to the time of the election canvass is just one of three options provided for. The voter could also return to the polling place with an acceptable ID prior to the poll closing on election day, or establish identity

and residency in the precinct by written oath of a person who is also registered to vote in the precinct.

iii. Voters who do not possess an Iowa driver's license or nonoperator's identification card, but nevertheless do appear in the DOT's driver's license or nonoperator's identification card files.

Section 48A.10A(2) provides that “[a] registered voter whose name appears in the department of transportation's driver's license or nonoperator's identification card files *shall not* be issued a voter identification card pursuant to this section.” (emphasis added). This means that voters who have a driver's license or nonoperator's ID cannot also have a Voter ID Card. It also means that voters who have lost, misplaced or discarded their driver's license or nonoperator's ID; have had their driver's license suspended or revoked; or who remain in the DOT files or the Secretary of State's records regarding those files erroneously, also cannot have a Voter ID Card. For these voters, the voter ID requirement can impose a more significant burden.

A voter subject to these circumstances must either go through the time, process and expense to obtain and pay for a replacement or reinstated license or nonoperator's ID; present one of the other acceptable forms of identification; or establish identity and residency in the precinct by written oath of a person who is also registered to vote in the precinct. The other acceptable forms of identification under section 49.78 are: a United States passport; a United States military or veterans identification card; or a current, valid tribal identification card or other tribal enrollment document issued by a federally recognized Indian tribe or nation, which includes a photograph, signature, and valid expiration date. Or the voter can provide the same identification that a voter can provide when registering to vote at the polls on election day. These, which all must be current and valid and contain the person's photograph and a valid expiration

date, include an out-of-state driver's license or nonoperator's identification card; a United States passport; a United States military or veterans identification card; an identification card issued by an employer; a student identification card issued by an Iowa high school or an Iowa postsecondary educational institution; and a tribal identification card or other tribal enrollment document issued by a federally recognized Indian tribe or nation, if the tribal identification card or other tribal enrollment document is signed before the card or document is presented to the election official. In cases where the ID presented does not contain the voter's address in the precinct, the voter must also provide one of the listed forms of proof of residency in the precinct.

It is quite possible that an eligible voter who does not possess an Iowa driver's license or nonoperator's identification card, but nevertheless appears in the DOT's driver's license or nonoperator's identification card files does not have one of the other acceptable IDs and could not obtain one, if at all, without the burden of a process and expense. Also, for this category of eligible voters, the Plaintiffs' argument that the law excludes some types of ID at the polling place that are just as or more reliable proof of identity as other forms of ID that it includes, has more bite. Certainly, for instance, student or employee IDs with a name and photograph but no expiration date are just as reliable (if not more so) as military or veteran IDs, which may not have any photograph or expiration date, to prove that persons attempting to vote are who they say they are. The result for eligible voters who do not possess a valid driver's license or nonoperator's identification card and also cannot obtain a Voter ID Card could be an inability to vote.

Having reviewed the burdens associated with the requirement that voters present identification at the polls, it is apparent that the requirement does not present an infringement on the right to vote for all voters who possess a valid driver's license or nonoperator's identification

³ See Iowa Code sections 321.206, 321.212(2)

card or who can obtain a Voter ID Card. For voters who do not possess a valid driver's license or nonoperator's identification card and also cannot obtain a Voter ID Card, however, there is more of a burden. Does this mean that the court should apply rational basis scrutiny for the vast majority of voters and some higher level of scrutiny for the few that fall into the last category, or should a higher level of scrutiny apply to all because of the burden on a few? Here is where the court needs to keep in mind that this is a facial challenge to the legislation.

A facial challenge is different from an as-applied challenge. The distinction between the two types of challenges appears simple enough, yet it is unclear and "more illusory than the ready familiarity of the terms suggests."

A facial challenge is one in which no application of the statute could be constitutional under any set of facts. Such a challenge is "the most difficult ... to mount successfully" because it requires the challenger to show the statute under scrutiny is unconstitutional in all its applications. In contrast, an as-applied challenge alleges the statute is unconstitutional as applied to a particular set of facts.

Honomichl v. Valley View Swine, LLC, 914 N.W.2d 223, 231 (Iowa 2018) (internal quotation marks omitted).

For a facial challenge in a voting context, a court "must consider only the statute's broad application to all [of the State's] voters," and the "facial challenge must fail where the statute has a plainly legitimate sweep." *Crawford*, 553 U.S. at 202–03 (opinion of Stevens, J.) (citation omitted). For the vast majority of eligible voters in Iowa, the voter identification requirement poses no real burden. They either present a driver's license or nonoperator's identification card which they already have, or a Voter ID Card which they either have or can easily obtain for free. This is the plainly legitimate sweep of this legislation. The small category of voters who do not possess a valid driver's license or nonoperator's identification and also cannot obtain a Voter ID

Card do not have a facial substantive due process challenge.

Having already determined that the voter ID requirement does not infringe upon the right to vote for the vast majority of eligible voters, the court applies a rational basis analysis. *Hensler v. City of Davenport*, 790 N.W.2d 569, 580 (Iowa 2010). The rational basis analysis requires the court to determine whether there is “a reasonable fit between the government interest and the means utilized to advance that interest.” *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005). “The rational basis test defers to the legislature's prerogative to make policy decisions by requiring only a plausible policy justification, mere rationality of the facts underlying the decision and, again, a merely rational relationship between the classification and the policy justification.” *Varnum v. Brien*, 763 N.W.2d 862, 879 (Iowa 2009). Courts will uphold policy decisions based on judgments the legislature could have made, without requiring proof or evidence that it actually made them. *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 32 (Iowa 2019) (quoting *King v. State*, 818 N.W.2d 1, 30 (Iowa 2012)).

The court does not need to guess at what the government interest or policy decision was here. It is stated directly in the legislation: “To ensure the integrity of, and to instill public confidence in, all elections in this state the general assembly finds that the verification of a voter's identity is necessary before a voter is permitted to receive and cast a ballot.” *Iowa Code* section 49.78(1). Under a rational basis analysis, the fact that voter impersonation at the polls is not a historical or current problem in Iowa does not carry the day. It merely has to be plausible that the legislature is concerned about the issue. “There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters...[and w]hile the most effective method of preventing election fraud may well be debatable, the propriety of doing

so is perfectly clear.” *Crawford*, 553 U.S. at 196 (opinion of Stevens, J.). While the necessity of requiring the verification of voters’ identities at the polls can be fairly debated, the rationality of the interest being addressed by such a requirement cannot. It is plausible that the legislature wants to ensure the integrity of, and to instill public confidence in elections. There is a rational relationship between that desire and requiring voters to produce identification at the polls.

That the overall legislative scheme of HF 516 relating to the voter ID requirement passes rational basis scrutiny when applied to the right to vote doesn’t end the inquiry. The fact remains that voters who do not possess an Iowa driver’s license or nonoperator’s identification card, but nevertheless do appear in the DOT’s driver’s license or nonoperator’s identification card files or the Secretary of State’s record of those files are treated differently than everybody else. They cannot obtain a Voter ID Card, and therefore have a greater burden than all other voters who are able to present a driver’s license or nonoperator’s identification which they already have, or a Voter ID Card which they either have or can easily obtain for free. This distinction invokes equal protection.

Article I, section 6 of the Iowa Constitution is referred to as the equal protection clause and provides, “All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.” *Iowa Const.* art. I, § 6. Iowa’s equal protection clause “is essentially a direction that all persons similarly situated should be treated alike.”

AFSCME Iowa Council 61 v. State, 928 N.W. 2d 21, 32 (Iowa 2019) quoting *Varnum v. Brien*, 763 N.W.2d 862, 878–79 (Iowa 2009) (quoting *Racing Ass’n of Cent. Iowa v. Fitzgerald (RACI)*, 675 N.W.2d 1, 7 (Iowa 2004)). In most cases, courts apply the rational basis test to equal

protection challenges. *See Varnum*, 763 N.W.2d at 879. There is no need to get bogged down in trying to determine whether some greater scrutiny should apply here, because that part of HF 516 set forth in the last sentence of Iowa Code section 48A.10A(2) providing that “[a] registered voter whose name appears in the department of transportation's driver's license or nonoperator's identification card files *shall not* be issued a voter identification card pursuant to this section,” does not pass even rational basis analysis.

To prove an equal protection violation, a plaintiff must first establish that the statute treats similarly situated individuals differently. *Varnum*, at 879, citing *McQuistion* at 830. Generally, however, determining whether classifications involve similarly situated individuals is intertwined with whether the identified classification has any rational basis. *Id*, citing *State v. Dudley*, 766 N.W.2d 606, 616 (Iowa 2009).

“The rational basis test is a ‘very deferential standard.’ ” *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 46 (Iowa 2012) (quoting *Varnum*, 763 N.W.2d at 879). The Plaintiffs bear “the heavy burden of showing the statute unconstitutional and [would have to] negate every reasonable basis upon which the classification may be sustained.” *Id*. (quoting *Bierkamp v. Rogers*, 293 N.W.2d 577, 579–80 (Iowa 1980)). Again, “[t]he rational basis test defers to the legislature’s prerogative to make policy decisions by requiring only a plausible policy justification, mere rationality of the facts underlying the decision and, again, a merely rational relationship between the classification and the policy justification.” *Varnum*, 763 N.W.2d at 879. “We will not declare something unconstitutional under the rational-basis test unless it ‘clearly, palpably, and without doubt infringe[s] upon the constitution.’ ” *Residential & Agric. Advisory Comm., LLC v. Dyersville City Council*, 888 N.W.2d 24, 50 (Iowa 2016)

(alteration in original) (*quoting RACI*, 675 N.W.2d at 8). Nevertheless, the rational basis standard, while deferential, “ ‘is not a toothless one’ in Iowa.” *Varnum*, 763 N.W.2d at 879 (*quoting RACI*, 675 N.W.2d at 9). “[T]his court engages in a meaningful review of all legislation challenged on equal protection grounds by applying the rational basis test to the facts of each case.” *Id.*

We use a three-part analysis when reviewing challenges to a statute under article I, section 6. “First, we must determine whether there was a valid, ‘realistically conceivable’ purpose that served a legitimate government interest.” *Residential & Agric. Advisory Comm., LLC*, 888 N.W.2d at 50 (*quoting McQuistion*, 872 N.W.2d at 831). “To be realistically conceivable, the [statute] cannot be ‘so overinclusive and underinclusive as to be irrational.’ ” *Id. (quoting Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 459 (Iowa 2013)). “Next, the court must evaluate whether the ‘reason has a basis in fact.’ ” *McQuistion*, 872 N.W.2d at 831 (*quoting RACI*, 675 N.W.2d at 7–8). “[A]lthough ‘actual proof of an asserted justification [i]s not necessary, ... the court w[ill] not simply accept it at face value and w[ill] examine it to determine whether it [i]s credible as opposed to specious.’ *LSCP, LLLP v. Kay-Decker*, 861 N.W.2d 846, 860 (Iowa 2015) (alteration in original) (*quoting Qwest Corp. v. Iowa State Bd. of Tax Review*, 829 N.W.2d 550, 560 (Iowa 2013)); *see also King v. State*, 818 N.W.2d 1, 30 (Iowa 2012) (“[W]e have continued to uphold legislative classifications based on judgments the legislature *could* have made, without requiring evidence or ‘proof’ in either a traditional or a nontraditional sense.”) (Emphasis added.))...

Finally, “we evaluate whether the relationship between the classification and the purpose for the classification ‘is so weak that the classification must be viewed as arbitrary.’ ”

AFSCME, 928 N.W.2d at 32-33.

Ensuring the integrity of, and instilling public confidence in elections is not a valid purpose for preventing a group of eligible voters from obtaining a Voter ID Card. And even if the court were to conjure a plausible interest, a concern over increased administrative and printing costs of providing Voter ID Cards to voters who don’t need them, that purpose doesn’t survive scrutiny, either. Denying a Voter ID Card to registered voters whose names appear in the DOT’s

driver's license or nonoperator's identification card files is irrationally overinclusive in that the classification includes voters who still possess their driver's license or nonoperator's identification card as well as those who, for the variety of reasons discussed above, do not. It is not rational to believe that a voter who is no longer in possession of his or her driver's license or nonoperator's identification card does not have the same need for a free Voter ID Card as someone who didn't have a driver's license or nonoperator's identification card in the first place.

Further, the belief that all voters in the DOT files or the Secretary of State's record of those files are in possession of their driver's license or nonoperator's identification card would have no basis in fact. Finally, the relationship between a classification which includes voters who no longer possess their driver's license or nonoperator's identification card, and the purpose for the classification, to not issue Voter ID Cards to voters who don't need them, is non-existent for an entire segment of the classification. The last sentence of Iowa Code section 48A.10A(2) providing that “[a] registered voter whose name appears in the department of transportation's driver's license or nonoperator's identification card files shall not be issued a voter identification card pursuant to this section,” should be stricken. All eligible, registered voters should be able to ask for and receive a Voter ID Card from their county auditor so that every voter can cast a ballot as easily as every other voter.

C. Requiring a Verification Number on an Absentee Ballot Application.

The Plaintiffs also assert that the requirement under Iowa Code section 53.2(4)(a)(4) that a voter provide a verification number on an absentee ballot application violates substantive due process regarding the right to vote. Here, the court also finds that the requirement does not infringe upon the right to vote for the vast majority of eligible voters, and passes rational basis

scrutiny.

It does not appear that the Iowa Supreme Court has decided whether the Iowa Constitution protects a right to vote absentee. There is no need to tackle that issue here, because for much the same reasons as with the voter ID requirement, the requirement of a verification number on an absentee ballot application does not infringe the right to vote absentee, even if that right is constitutionally protected.

First, as a result of this court's conclusion above that the last sentence of Iowa Code section 48A.10A(2) should be stricken, there is no reason for any registered voter not to have a driver's license, nonoperator's ID or Voter ID Card.⁴ The number on that ID simply needs to be written on the application. This presents no additional burden to the absentee ballot application process.

Second, failure to provide the voter verification number does not result in the rejection of the absentee ballot application. Under Iowa Code section 53.2(4)(b), "[i]f insufficient information has been provided, including the absence of a voter verification number, either on the prescribed form or on an application created by the applicant, the [county auditor] shall, by the best means available, obtain the additional necessary information." The application is not rejected; the county auditor is to obtain the missing information to complete the application. This may include obtaining the voter verification number from the Secretary of State or DOT records.⁵ The temporary injunction enjoining the Secretary of State from including on the absentee ballot application language stating, "An absentee ballot cannot be issued until ID

⁴ Indeed, if the last sentence of Iowa Code section 48A.10A(2) were not stricken, this would present another reason to do so, as there would be some voters who could not provide any of the necessary verification numbers without incurring substantial burden.

⁵ Depending on the outcome of the appeal of the district court judicial review order in CVCV056608 striking the

number is provided" or similar words indicating that such information is "required" should, however, be made permanent.

The rational basis scrutiny of the requirement that a voter provide a verification number on an absentee ballot application, and the result of that scrutiny, is the same as with the requirement that voters produce identification at the polls. There is a reasonable fit between the government interest of ensuring the integrity of, and instilling public confidence in, all elections in this state, and the means utilized to advance that interest of requiring a voter verification number on an absentee ballot application. It may even be more reasonable of a fit in the case of voting absentee, where the voter is not seen in person at the polling place, and trial testimony revealed that that mail-in absentee voter fraud is more prevalent in Iowa than impersonation at the polls. The temporary injunction enjoining the requirement that absentee ballot applications contain a voter verification number as set forth in Iowa Code section 53.2(4)(a)(4) should be dissolved.

D. The Signature Verification (Matching) Provision.

The Plaintiffs also assert that the signature verification (matching) requirements under *Iowa Code* sections 53.2(5) and 53.18(3) violate equal protection and procedural due process rights. Under these sections, the county auditor may dispute an application for an absentee ballot or reject an absentee ballot if it appears to the county auditor that the signature on the application or the affidavit or return envelope with the absentee ballot has been signed by someone other than the registered voter, in comparing the signature on the application, affidavit or envelope to the signature on record of the registered voter.

administrative rule adopted by the Secretary of State limiting the sources from which a county auditor can obtain missing information from voters' requests for absentee ballots. That appeal is pending in Sup. Ct. No. 19-0303.

If an absentee ballot application is disputed in this manner, the county auditor is to notify the registered voter who may then submit a new application and signature or update the registered voter's signature on record within the timeframe for submitting an absentee ballot application. If the county auditor determines that the signature on an absentee ballot affidavit or return envelope doesn't match, he or she is to consider the ballot to contain a defect, requiring the auditor to immediately notify the voter of that fact and that the voter's absentee ballot shall not be counted unless the voter requests and returns a replacement ballot in the time permitted under section 53.17(2) (before the polls close at 9 p.m. on election day or postmarked by the Monday before election day, and received by Monday at noon after election day). *Iowa Code* § 53.18(3). However, voters whose absentee ballots are received after 5 p.m. on the Saturday before a general election but before the absentee ballot receipt deadline, receive no notice if the ballot is rejected because of an alleged signature defect. *Iowa Code* § 53.18(2).

No statutory guidance is provided as to how to determine whether a signature doesn't match. Nor is the phrase "signature on record" further defined. The Secretary of State did provide some guidance to county auditors, stating that they are to presume the signature is the voter's, and are not to dispute or reject the signature unless it is obvious that the signature doesn't match whatever "signature of record" he or she is comparing the signature to. The Secretary of State also informed county auditors that enforcement of the signature matching provisions was optional, and up to each county auditor. The evidence presented indicated that no voter signatures were challenged after enactment of HF 516 and before the temporary injunction was entered enjoining enforcement of these provisions. The county auditors who testified all stated to the effect that they do not anticipate challenging voter signatures because they do not feel they or

their staffs are qualified to do so.

The same standards for analyzing alleged equal protection violations set forth in section B (iii) above apply here. Regarding the signature matching provisions, the statutes as written, even with the Secretary of State's guidance to county auditors, allows for similarly situated individuals to be treated differently. Different auditors are free to use different standards to compare signatures or ignore the signature matching provisions entirely. The universe of signatures "on record" is unknown. On record with whom? How far back do we look? Is a signature on record pen to paper or electronic, using a stylus and computer signature pad? How hard does an auditor have to look for such a signature? Does the voter have any signature on record? How many? There are potentially myriad different, arbitrary classifications of voters including, but not limited to, which of the 99 counties a voter lives in; the training of a county auditor or staff; the availability, type, age and quality of any signatures "on record" for a voter. There is no relationship between the government interest of preventing absentee voter fraud and these classifications. Though not perfectly, the potential scenarios created by these provisions are analogous to that faced by the U.S. Supreme Court in *Bush v Gore*, 531 U.S. 98 (2000). There, the Court held that the process of counting ballots in Florida violated equal protection when the officials administering the recount "had no previous training in handling and interpreting ballots," *Id.* at 109, and different counties used "varying standards to determine what was a legal vote." *Id.* at 107.

The differing burdens associated with voting amongst the different classes of voters which could stem from the enactment of the signature matching provisions are not inconsequential. Absentee ballot applicants whose signatures are challenged would have to

submit a new application and signature or update their signature on record within the timeframe for submitting an absentee ballot application. If the county auditor determines that the signature on an absentee ballot affidavit or return envelope doesn't match, the voter's absentee ballot will not be counted unless the voter requests and returns a replacement ballot before the polls close at 9 p.m. on election day or postmarked by the Monday before election day, and received by Monday at noon after election day.

Further, voters whose absentee ballots are received after 5 p.m. on the Saturday before a general election will have no opportunity to cure if the ballot is rejected because of an alleged signature defect, and their vote will not count. This has procedural due process implications as well as equal protection concerns.

Under Iowa law, courts are to use a two-step inquiry to adjudicate a procedural due process claim: the court first determines whether a liberty or property interest is at stake, and, if so, it applies the three-factor test delineated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine what process is due. *Seering*, 701 N.W.2d at 665. The three-factor test requires the court to consider: "(1) the private interest that will be affected by the government action; (2) the risk of the erroneous deprivation of the interest, and the probable value of additional procedures; and (3) the government interest in the regulation, including the burdens imposed by additional procedures." *Hernandez-Lopez*, 639 N.W.2d at 240.

The Defendant concedes that the right to vote is a protected interest within the meaning of the Due Process Clause of the Iowa Constitution. Under the three-factor balancing test of *Mathews v. Eldridge*, the risk of depriving Iowans of the right to vote outweighs any state interest in requiring signature-verification of absentee applications and ballots.

A voter has a strong interest in voting as a right and a privilege. *See Griffin v. Pate*, 884 N.W.2d 182, 185 (Iowa 2016) (“In our representative form of governing, [voting] serves to give a voice to the people. This voice is as important to the democracy as it is to those the democracy governs” (internal citation omitted)); *Chiodo*, 846 N.W.2d at 848 (voting “occupies an irreducibly vital role in our system of government by providing citizens with a voice in our democracy and in the election of those who make the laws by which all must live”). The lack of standards for comparing signatures; the lack of expertise and training regarding comparing signatures; and the unknown source, quantity and quality of any signatures “on record” all contribute to a likelihood of error in determining a voter’s signature doesn’t match, resulting in a vote received after 5 p.m. on the Saturday before a general election not being counted. Having such a ballot treated and preserved as a provisional ballot with notice provided to the voter and an opportunity to the voter to demonstrate to the absentee and special voter precinct board that the signature on the affidavit or envelope was that of the voter would be a valuable additional procedure that would serve to protect the voter’s interest in having his or her vote count. Such a procedure would neither negate the government’s interest in protecting against absentee voter fraud, nor impose any substantial burden on the government.

The signature matching provisions of HF 516 do not pass rational basis scrutiny under the Equal Protection Clause of the Iowa Constitution. Further, as the legislation does not provide for any procedure to protect the rights of a voter whose absentee ballot is erroneously rejected due to a signature mismatch when the vote is received after 5 p.m. on the Saturday before a general election, the provision also fails on procedural due process considerations.

IV. ORDER

IT IS THEREFORE ORDERED that the last sentence of Iowa Code section 48A.10A(2) which states: "A registered voter whose name appears in the department of transportation's driver's license or nonoperator's identification card files shall not be issued a voter identification card pursuant to this section." violates the Iowa Constitution and is stricken from the statute. Further, the Iowa Secretary of State shall not make any regulation or provision which prevents a county auditor in the State of Iowa from issuing a voter identification card to any registered voter in the county who requests one, regardless of whether the registered voter's name appears in the department of transportation's driver's license or nonoperator's identification card files.

IT IS FURTHER ORDERED that Iowa Code section 53.2(5), which states:

The commissioner may dispute an application if it appears to the commissioner that the signature on the application has been signed by someone other than the registered voter, in comparing the signature on the application to the signature on record of the registered voter named on the application. If the commissioner disputes a registered voter's application under this subsection, the commissioner shall notify the registered voter and the registered voter may submit a new application and signature or update the registered voter's signature on record, as provided by rule adopted by the state commissioner.

violates the Iowa Constitution and is stricken from the statute.

IT IS FURTHER ORDERED that the portion of Iowa Code section 53.18(3) which states:

For the purposes of this section, a return envelope marked with the affidavit shall be considered to contain a defect if it appears to the commissioner that the signature on the envelope has been signed by someone other than the registered voter, in comparing the signature on the envelope to the signature on record of the registered voter named on the envelope. A signature or marking made in accordance with section 39.3, subsection 17, shall not be considered a defect for purposes of this section.

violates the Iowa Constitution and is stricken from the statute.

IT IS FURTHER ORDERED that the portion of the temporary injunction Order entered herein on July 24, 2018 which provided “that the Secretary State is ENJOINED from including on the absentee ballot application language stating ‘[a]n absentee ballot cannot be issued until ID number is provided’ or indicating that such information is ‘required’”, is hereby made permanent and the Iowa Secretary of State is hereby permanently enjoined from taking such action.

IT IS FURTHER ORDERED that all other claims and counts for declaratory and injunctive relief set forth in the Plaintiffs’ Amended Petition in Law and Equity, not specifically addressed in the above Orders, are hereby denied and dismissed, and any temporary injunction relating to such claims and counts not specifically addressed in the above Orders are hereby dissolved.

IT IS FURTHER ORDERED that the costs of this action are assessed one-half to the Plaintiffs and one-half to the Defendant.



State of Iowa Courts

Case Number

CVCV056403

Case Title

LEAGUE OF UNITED LATIN AMER CITIZENS ETAL VS

PAUL PATE ETAL

Type:

OTHER ORDER

So Ordered

Joseph Seidlin, District Court Judge
Fifth Judicial District of Iowa

Electronically signed on 2019-09-30 18:50:14